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(31) Civil Writ Petitions Nos. 169, 1941, 5944, 6465 and 6760 of 1976; 1731 and 3297 of 1978; and 304, 1374 and 1376 of 1979 are consequently dismissed. The petitioners are allowed 15 days' time to comply with the orders passed by the authorities concerned. The parties are left to bear their own costs.

M. R. Sharma, J.—I agree.
S. S. Sandhawalia, C.J.—I agree.
S. S. Sidhu, J.—I also agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia C.J., S. C. Mital and Harbans Lal, JJ.

PUNJAB AGRICULTURAL UNIVERSITY and another—*Appellants.*

versus

ROOP SINGH and others —*Respondents.*

Letters Patent Appeal No. 255 *of* 1975.

November 6, 1979.

Punjab Agricultural University Act (32 *of* 1961)—*Section* 29(*a*)—*Punjab Agricultural University Rules—Rules* 12, 19(1) *and* 20(9)—*Employee of the University overstaying leave for more than a week—Rule* 20(9) *makes the post liable to be declared vacant—Post of such an employee actually declared vacant—Employee—Whether entitled to reasonable opportunity of being heard—Rules of natural justice—Whether attracted—Theory of post decisional opportunity—Whether applicable.*

Held, (per majority S. C. Mital and Harbans Lal JJ., S. S. Sandhawalia. C. J. contra.) that rule 20 of the Punjab Agricultural University Rules consisting of 16 clauses specifically deals with leaves of various kinds. Clause (1) prescribes the authority competent to grant leave, clause (2) lays down how much earned leave is admissible to an employee and clause (3) refers to furlough admissible to an employee. Clause (11) categorically says that no

leave can be claimed as of right. It is in these settings that clause (9) provides that if an employee overstays his leave for more than one week his office shall be liable to be declared vacant. A bare reading of this clause indicates infliction of punishment on an employee who overstays his leave. Rule 19(1) lays down the grounds on which the service of an employee shall be liable to be terminated. There is no gainsaying that rule 20(9) contains an element of punishment of removal from service for overstaying one's leave, and before being removed from service, the employee is entitled to a reasonable opportunity of showing cause against the impugned action. Besides, the rules of natural justice will come into play as they have been made to apply to administrative proceedings as well. (Paras 3 and 4).

Held, (per majority S.C. Mital and Harbans Lal JJ., S. S. Sandhawalia, C.J., contra.) that it appears exceedingly difficult to apply the theory of post decisional opportunity in the present situation. It is well settled that the two facets of the principle of *audi alteram partem* are; (a) Notice of the case made; and (b) Opportunity to explain. In the nature of things, this principle will not come into play after the punishment of removal from service has been inflicted on the employee. (Para 6).

Held, (per S. S. Sandhawalia, C.J. contra.) that the language of clause (9) of rule 20 in conferring a purely administrative power makes not the least mention of a notice or an opportunity to show cause and it is evident that its very purpose of providing a sanction against unwarranted absence from duty will be totally frustrated if the requirement of holding an enquiry and an opportunity to show cause is super imposed by judicial interpretation. The end result would be that no action to compel the return of a recalcitrant employee deliberately absent from duty as in the present case would be possible till he chooses to return to duty. It will bring into the arena of the grant of leave and overstaying thereof all the paraphernalia of holding an enquiry and opportunity to show cause which by judicial interpretation involves the right to lead evidence, to examine witnesses, to have access to all materials. In effect the question of overstaying leave and the penalty provided therefor would be converted into a regular *lis* between the employer and the employee. No public service can possibly function when hedged with such hurdles at the step of the grant of leave and its unauthorised overstaying. The plain purpose of rule 20(9) is to prevent unauthorised absence from duty and overstaying of leave. This is a necessary concomitant of any disciplined service. Therefore, the provision of penalty for overstaying and of a severe one for gross overstaying, is not only perfectly legal but indeed eminently

desirable. Once that is so, then the nature or the severity of such a sanction or penalty is wholly for the employer to prescribe and it is not for the Courts to sit on judgment with regard to the particular disciplinary requirements of University establishments. The penalty of having the office declared vacant is neither automatic nor mandatory and at best an erring absentee from duty is only subject to the liability of its imposition. Again the exercise of the power is not arbitrary and can be exercised only on the fulfilment of the objective foundation of an employee having overstayed for more than seven days. At the very highest, in such a situation a post decisional opportunity to explain the overstay and recall of the order is the very maximum that can be called for. But to ask for the requirement of notice and enquiry before even initiating any action would be wholly and utterly frustrative of both the object and the purpose of clause 20(9) which otherwise is admittedly within the four corners of the law. (Paras 24 and 25).

Held, (per Harbans Lal, J.) that the provision as embodied in rule 20(9) does not admit of any other interpretation except the one that in case of overstay of leave on the part of an employee he is liable to be removed from service by the employer. It is also crystal clear that overstay of leave is an act of misconduct or gross negligence in the discharge of duty on the part of an employee as he has no absolute right to proceed on leave without the sanction of the authority concerned. This being the position, an employee cannot be removed from service on account of overstaying his leave except in accordance with the provisions of rule 12(iii). Besides, under rule 20(9) in case of overstay of leave on the part of an employee, the said conduct or the misconduct, as the case may be, is not bound to result in removal or automatic declaration of the office as vacant. Only a discretion has been conferred on the employer to remove the employee concerned and declare his office vacant. It has been clearly provided therein that the office is liable to be declared vacant. In this situation, there must be some material before the employer before his discretion can be exercised. It cannot be contended that removal could be ordered even arbitrarily. The discretion cannot be properly exercised unless the employee has been given an opportunity to show cause and he explains the circumstances in which he overstayed his leave. Without an opportunity having been granted there will be no material before the employer and the decision is bound to be an act of arbitrariness and not in exercise of his discretion. Rule 12(1) again specifically provides that the penalties mentioned therein including that of removal will be imposed "for good and sufficient reason". An order of removal cannot disclose good and sufficient reason unless the employee concerned had been heard and given an opportunity to explain the circumstances relating to overstay of his leave. Thus, there is no escap-

from the conclusion that the order of the employer under rule 20(9) has to be a speaking order disclosing "good and sufficient reason" and as a result of exercise of the discretion. It has also to comply with the mandate as embodied in clause (iii) of rule 12 regarding the opportunity of hearing. Moreover, the principle of natural justice as embodied in *audi alteram partem* applies not only to the cases where the authorities are required to act in a quasi judicial manner but also in purely administrative matters. This important principle of natural justice has been held to mean to act justly and fairly and not arbitrarily. The doctrine has been held succinctly to be 'fair-play in action.' Where an order results in civil consequences against whom the same is passed strict observance of the principle and to provide a notice of hearing are mandatory.

(Paras 37, 39 and 42).

Letters Patent Appeal under clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Prem Chand Jain, dated March 5, 1975, in Civil Writ Petition No. 88 of 1974.

Kuldip Singh, Advocate with R. S. Mongia, Advocate, *for the Appellant.*

H. L. Sibal, Advocate with G. S. Chawla, Advocate, *for the Respondents.*

JUDGMENT

S. C. Mital, J.

(1) Rule 20(9) of the rules framed under section 29 (q) of the Punjab Agricultural University Act, 1961, provides that if an employee overstays his leave for more than a week, his office shall be liable to be declared vacant. The question is: Whether termination of the service of an employee under Rule 20 (9) without giving him reasonable opportunity, is valid ?

(2) Brief facts of this case are that Roop Singh, a permanent employee of the Punjab Agricultural University, took earned leave from 20th June, 1973, to 14th July, 1973, with permission to suffix the following 15th. His application for extension of leave for 15 days with effect from 16th July was rejected and he was telegraphically directed to join duty. Instead of complying with the direction Roop Singh, submitted another application for extension of leave. In the writ petition, Roop Singh averred that he along with six other

employees of the University were falsely involved in a criminal case relating to an incident of strike in the University. For arranging legal aid, he approached the Dean of the College of Veterinary Medicine for extension of leave upto 10th August, 1973, with permission to suffix the following two holidays; but his leave was not sanctioned. On the contrary, by applying Rule 20 (9) the office held by him, without giving him show-cause notice was declared vacant on 3rd August, 1973. When Roop Singh reported on duty on 13th August, 1973, he was not allowed to join. The writ petition filed by Roop Singh was allowed by the learned Single Judge on the ground that the termination of his service violated the rules of natural justice. The University then preferred the letters patent appeal wherein the above-said question has arisen.

(3) Rule 20, consisting of 16 clauses, specifically deals with leave of various kinds. Clause (1) prescribes the authorities competent to grant leave; clause (2) lays down how much earned leave is admissible to an employee and clause (3) refers to furlough admissible to an employee. Clause (11) categorically says that no leave can be claimed as of right. It is in these settings that clause (9) reads:—

> "If the employee overstays his leave he shall forfeit all his salary during the time of his remaining so absent; and if he overstays his leave for more than one week his office shall be liable to be declared vacant."

(4) Learned counsel for Roop Singh urged that the bare reading of clause (9) of Rule 20, indicated infliction of punishment on an employee who overstays his leave. Reference was then made to Rule 19(1) laying down the following grounds on which the service of an employee shall be liable to termination:—

(a) Gross negligence in the discharge of duty ;

(b) Misconduct ;

(c) Insubordination or any breach of discipline ;

(d) Physical or mental unfitness for the discharge of duty ;

(e) Any act prejudicial to the University or its property ; and

(f) Conviction in a Court of Law for offence involving moral turpitude.

If an employee overstayed his leave, argued the learned counsel for Roop Singh, he could be said to have misconducted himself. Strong reliance was place on *Jai Shanker* v. *State of Rajasthan*, (1), wherein it was held that the removal of a Government servant from service for overstaying his leave is illegal even though the Regulation provides that "an individual who absents himself without permission or who remains absent without permission for one one month or longer after the end of his leave should be considered to have sacrificed his appointment and may only reinstated with the sanction of the competent authority.

Note :—The submission of an application for extension of leave already granted does not entitle an individual to absent himself without permission." The contention before their Lordships on behalf of the Government that the Government did not order removal of the employee because he himself gave up the employment, was overruled with the following observation:—

> "We do not think that the constitutional protection can be taken away in this manner by a side wind. While, on the one hand, there is no compulsion on the part of the Government to retain a person in service if he is unfit and deserves dismissal or removal, on the other, a person is entitled to continue in service if he wants until his service is terminated in accordance with law. One circumstance deserving removal may be overstaying one's leave. This is a fault which may entitle Government in a suitable case to consider a man as unfit to continue in service. But even if a regulation is made, it is necessary that Government should give the person an opportunity of showing cause why he should not be removed. During the hearing of this case we questioned the Advocate General what would happen if a person owing to reasons wholly beyond his control or for which he was in no way responsible or blamable, was unable to return to duty for even a month, and if later on he wished to join as soon as the said reasons disappeared ? Would in such a case Government remove him without any hearing, relying on the regulation? The learned Advocate General said that the question would not be one of

(1) AIR 1966 S.C. 492.

removal but of reinstatement and Government might reinstate him. We cannot accept this as a sufficient answer. The Regulation, no doubt, speaks of reinstatement but it really comes to this that a person would not be reinstated if he is ordered to be discharged or removed from service. The question of reinstatement can only be considered if it is first considered whether the person should be removed or discharged from service. Whichever way one looks at the matter, the order of the Government involves a termination of the service when the incumbent is willing to serve. The Regulation involves a punishment for overstaying one's leave and the burden is thrown on the incumbent to secure reinstatement by showing cause. It is true that the Government may visit the punishment of discharge or removal from service on a person who has absented himself by overstaying his leave, but we do not think that Government can order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is done the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Article 311. A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it. To give no opportunity is to go against Article 311 and this is what has happened in this case."

Doubtless, Roop Singh, an employee of the University, as contended by the learned counsel for the University, was not entitled to protection under Article 311 of the Constitution, but the facts remains that the ratio of the authority, as regards the interpretation of a similar rule or regulation, by their Lordships of the Supreme Court has a strong bearing on the present case. Thus, it is no gainsaying that Rule 20 (9) contains an element of punishment of removal

from service for overstaying one's leave. In this situation, learned counsel for Roop Singh invited our attention to Rule 12 laying down :—

"12. Penalties: (i) The following penalties may, for good and sufficient reason be imposed upon any employee of the University :

(a) Censure ;

(b) Withholding of increments or promotion, including stoppage at an efficiency bar, if any ;

(c) Reduction to a lower post or to a lower stage in the same post ;

(d) Recovery from pay of the whole or part of any pecuniary loss caused to the University by negligence or breach of orders ;

(e) Suspension ;

(f) Removal from the service of the University which does not disqualify from future employment ;

(g) Dismissal from the service of the University which ordinarily disqualifies from future employment ;

Provided that * * * *

(ii) * * * *
* * * *
* * * *
* * * *
* * * *

(iii) No penalty of dismissal, removal or reduction shall be imposed unless the employee has been given a reasonable opportunity of showing causes against the action proposed to be taken in regard to him.

(iv) to (vi) * * * *
* * * *

Accordingly, it was urged that Roop Singh having been removed from service was entitled to a reasonable opportunity of showing cause against the impugned action. Besides, the rules of natural

justice were pressed into service by relying on *Mohinder Singh Gill and another* v. *The Chief Election Commissioner, New Delhi and others,* (2). The said rules have been made to apply to administrative proceedings as well by their Lordships of the Supreme Court with the following observations :—

> "We consider it a valid point to insist on observance of natural justice in the area of administrative decision-making so as to avoid devaluation of this principle by 'administrators' already, alarmingly insensitive to the rationale of *audi alteram partem*".

(5) As to the widesweep of the operation of the principles of natural justice, *Smt. Maneka Gandhi* v. *Union of India,* (3), was also cited.

(6) In the alternative, learned counsel for the University pressed into service the theory of post-decisional opportunity enunciated by their Lordships of the Supreme Court in Mohinder Singh Gill's case (supra). On the other hand, their Lordships of the Supreme Court in Jai Shanker's case (supra) having ruled that the Regulation, similar to Rule 20(9), contained an element of punishment, it appears exceedingly difficult to apply the above-said theory. It is well-settled that the two facts of the principle of *audi alteram portem* are :—

(a) Notice of the case made; and

(b) Opportunity to explain.

In the nature of things, this principle will not come into play after the punishment of removal from service has been inflicted on an employee.

(7) In the result, I would dismiss the appeal, leaving the parties to bear their own costs.

(2) AIR 1978 S.C. 351.

(3) AIR 1978 S.C. 597.

S. S. Sandhawalia, C.J.

(8) Whether the principles of natural justice are to be stretched and extended to the purely administrative field of the grant of leave and the penalties of overstaying thereof prescribed by the University Regulations for its employees (who are not even remotely governed by Article 311 of the Constitution) is the very significant question that arises for determination in this appeal under clause 10 of the Letters Patent.

(9) Though the facts appear briefly in the judgment of my learned brother S. C. Mital, J., yet it becomes necessary to recapitulate them in order to maintain the homogeneity of this dissent. At the material time the respondent-writ petitioner Roop Singh was employed as a Superintendent in the Punjab Agricultural University, Ludhiana, and by his application dated the 19th of June, 1973 (annexure R. 2 to the written statement) he sought leave from the 20th June, to the 14th of July, 1973, on the ground of the illness of his wife. However, he did not rejoin on the scheduled date and instead merely forwarded another application seeking an extension of leave for another period of 15 days on the 16th July, 1973. At the bar it was not disputed that the University at that time was faced with a crippling strike of its employees nor was it seriously disputed that the respondent was not only an active participant therein but being the President of the employees' union was virtually leading the same. In view of the extreme shortage of staff, the respondent was telegraphically informed by the University on the 19th July, 1973, that any further extension of leave was not possible and the same stood declined. It is not in dispute that the respondent was fully cognisant of his refusal and in his reply dated the 20th of July, 1973, (annexure R. 4) he contumaciously claimed his right to continue on leave and sermonised to the University that it was indulging in wasteful expenditure against the canons of financial propriety by spending public money in sending telegrams to him at the University Campus. In reply thereto the Dean of the appellant-University sent a registered communication in the following terms to the respondent-writ petitioner :—

"Subject : *Absence from duty.*

Reference your application dated 20th July, 1973.

2. I am directed to inform you that the extension of leave has not been sanctioned in view of the shortage of staff.

> 3. As already advised, you should report for duty without any further delay, otherwise the entire period beyond 16th July, 1973 will be treated as absence from duty."

Nevertheless the respondent did not choose to rejoin duty which ultimately compelled the appellant-University to take action as late as the 3rd of August, 1973, under clause (9) of Rule 20 of the statutes framed under section 29(g) of the Punjab Agricultural University Act, 1961, in the following terms :—

> "The Vice-Chancellor of the Punjab Agricultural University is pleased to declare the office of Shri Roop Singh Superintendent, office of the Dean College of Veterinary Medicines, as vacant with effect from 15th July, 1973, on account of his overstayal from leave under clause (9) of clause 20 of the Statute (Part A) regarding the number qualifications, emoluments and other conditions of service of officers and other employees of the University not being teachers."

it is the admitted stand that though a case under sections 325, 341 and 379, Indian Penal Code, was registered against the respondent for the offences committed in the course of the strike yet at no stage was he actually arrested or detained during the material period. Nevertheless, it was only in the 13th of August, 1973, or later that he sought to rejoin duty but in view of the impugned order his request was not acceded to. Thereafter he made a representation dated the 22nd of August 1973, which was considered and filed and later he made another representation dated the 6th of December, 1973, which, according to paragraph 9 of the return filed on behalf of the appellant-University, is pending and no decision could be taken thereon in view of the fact that the respondent had by that time already presented the writ petition.

(10) The respondent-writ petitioner primarily laid challenge to the order of the University declaring his office vacant and on his behalf three contentions were sought to be raised to impugn the same. However, the learned Single Judge took into consideration the only argument that even if it were to be held that sub-clause (9) of clause 20 is an independent clause yet before passing any order reasonable opportunity of being heard was to be afforded to the person against

whom the action was proposed to be taken. This contention found favour with the learned Single Judge solely on the ground that the word 'liable' had been used in clause 20(9) of the Statutes and therefore the framers thereof necessarily envisaged some sort of an enquiry and the respondent was, therefore, entitled to the same and also to an opportunity to show cause against the proposed action. On this ground the learned Single Judge allowed the petition and set aside the order of the Vice-Chancellor by which the office of the respondent had been declared vacant.

(11) Aggrieved by the judgment of the learned Single Judge the appellant-University has presented this appeal under Clause 10 of the Letters Patent which has had a chequered career in this Court, which is evident from the record, but a reference to the same is of not any great relevance now.

(12) Perhaps at the very outset, it deserves highlighting that though the very corner-stone of the learned Single Judge's judgment was his reliance on the word 'liable' in clause 20(9), in the argument before us the learned counsel for the respondent did not get much store thereby. His stand indeed was more broad-based and not pegged to the word 'liable' and it was contended that the overall provisions of sub-clause (9) and the context in which it was laid necessarily attracted the principles of natural justice. It is for this reason indeed that the judgment of my learned brother S.C. Mital J., does not even remotely advert to any argument turning on the word 'liable'. Nevertheless, since this was the contention which was accepted in the judgment under appeal it is necessary to advert to and adjudicate upon the same.

(12-A) Mr Kuldip Singh for the appellant-University has forcefully assailed the view that the mere use of the word 'liable' would either necessarily envisage an enquiry or inflexibly import the rules of natural justice. In this submission, learned counsel appears to be on firm ground. An analysis of sub-clause (9) would show that it consists of two parts. The first one deals with the penal consequences of over-staying as regards salary and this is mandatory and absolute in terms laying down that if the over-stay is unauthorised the employee shall forfeit all his salary during the time of his remaining so absent. However the second part of sub-clause (9) is not in

terms absolute but leaves a discretion to the appointing authority. To put it in other words, the penalty of declaring the office vacant is not automatic but optional. It was rightly highlighted that the use of the word 'liable' here is to bring forth this distinction. The word 'liable' vests a power in the appointing authority if it is so minded to declare the office vacant only if the pre-condition of the over staying of leave for more than one week stands satisfied. Therefore, there is force in the argument that the word 'liable' has been used to indicate that the declaration of the office as vacant is not automatic or a necessary and inevitable consequence of overstaying beyond a week. In fact this pre-condition would only vest a power in the appointing authority to declare the office vacant or a liability *qua* the employee to lose his office. It would be thus evident that the use of the word 'liable' here may well be to highlight the fact that whilst the first limb of sub-clause (9) is mandatory the later is in effect discretionary.

(13) Mr Kuldip Singh seems to be right in contending that the mere use of the word 'liable' by itself cannot be a warrant for the requirement of the holding of an enquiry. Learned counsel for the respondent could cite neither principle nor precedent for so absolute a proposition that this solitary word would envisage within it the whole concomitant procedural requirements of an enquiry. Reference in this context was also made by the learned counsel for the appellant to the criminal statutes including the Indian Penal Code which render the offender liable to imprisonment or fine. It was forcefully submitted that the use of the words in these statutes merely vested a discretion in the Courts. In effect such terminology would dilute an absolute rule to a discretionary one. It was rightly submitted that the solitary use of the word 'liable' does not create a lis between the parties calling for a judicial or a quasi-judicial trial of the issue.

(14) Agreeing with the aforesaid contention I am unable to hold that the mere use of the word 'liable' is in any way conclusive either on the point of the necessity of an enquiry or inevitably calling in the requirements of natural justice and an opportunity to show cause. It bears repetition that this in the ultimate analysis was not even the stand of the learned counsel for the respondent. In fact it was argued that *de hors* the use of the

word 'liable' the principles of natural justice would nevertheless be attracted. That being so, it is manifest that the issue has to be examined in a much larger perspective and on broader considerations.

(15) Now to clear the cobwebs, Mr. Kuldip Singh for the appellant took great pains to highlight and project the fact that herein neither the provisions nor the principles underlying Article 311 can remotely be attracted. It was pointed out that the respondent is neither a member of a civil service under the Union or the State nor holds a civil post nor can even remotely attract the provisions of Article 311 of the Constitution. This is indeed admitted on all hands. It appears to be equally manifest that if Article 311 is in terms not applicable then it cannot be brought in by the back door by pretending to apply the principles thereunder. After the exclusion of Article 311 from the field only the general law of master and servant is and inevitably alone can be attracted unless modified by any other statutory provision. Admittedly in the present case the only other statutory provisions attracted are the statutes of the University. If one may say so the Magna Carta or the cornerstone of the respondent-writ petitioner's stand is and must be on the statutes and regulations as such and no others. This aspect, therefore, deserves to be prominently kept in the forefront because the ghost of Article 311 stalks and strays into fields where it is not at all applicable and bedevils one's thinking in all service matters. To clear the deck, therefore, it is self-evident that the question here has to be determined primarily and entirely on the provisions of the University statutes applicable and *de hors* of the considerations which are attracted under Article 311.

(16) Once that is so — and it may be pointedly noticed that the learned counsel for the respondent fairly conceded that Article 311 is neither expressly nor impliedly attracted — it is plain that all the judgments under the said Article have no relevance to the issue before us. This assumes signal importance because the analysis of the judgment of my learned brother S. C. Mital, J., leaves hardly any manner of doubt that it is rested entirely and squarely on an observation in *Jai Shanker* v. *State of Rajasthan* (supra). After quoting extensively from the said judgment it has been held that the ratio of this authority had a strong bearing on the present case and in fact has been virtually deemed to be conclusive.

(17) In view of the above at the very threshold the question arises whether the ratio of *Jai Shanker's case* is applicable here or not? With great respect it appears to be plain that it is not even remotely so. *In Jai Shanker's case* the appellant undoubtedly was a permanent public servant to whom protection of Article 311 extended completely. Hidayatullah J., speaking for the Bench himself analysed the question before it in these terms :—

> "The short question in this appeal is whether Jai Shanker was entitled to an opportunity to show cause against the proposed punishment as required by clause (2) of Article 311. It is admitted that no charge was framed against him. Nor was he given any opportunity of showing cause."

In answering the same it was first observed as follows:—

> "* * *. It is, however, contended that under the Regulations all the Government does, is not to allow the person to be reinstated. Government does not order his removal because the incumbent himself gives up the employment. We do not think that the constitutional protection can be taken away in this manner by a side wind."

and finally concluded —

> "It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Article 311. A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the regulation describes it. To give no opportunity is to go against Article 311 and this is what has happened here."

To my mind it is plain from the above that their Lordships were viewing the issue entirely on the touchstone of the protection of Article 311 and were laying down that its constitutional protection

could not be taken away and ultimately struck down the order wholly and solely on the ground of its violation of Article 311. If that be so in a case where the employee is neither a public servant nor remotely covered by Article 311 the ratio of *Jai Shanker's case* in my humble view cannot be even remotely called in. As was said in *Quinn* v. *Lathama* (4) judgment is an authority for what it decides and not for every passing observation therein. With respect I am unable to find even a passing observation in *Jai Shanker's* judgment which could be of aid to the respondent who admittedly is neither a member of the civil service of the Union or the State nor holds a civil post thereunder.

(18) Once Article 311 and consequently *Jai Shanker's case* is out of the way it is plain that the whole controversy must revolve around the material provisions of clause 20 in Chapter IX Part 'A' of the Statutes under section 29(q) of the Agricultural University Act, 1961, which read—

"20(1) The authority competent to grant leave and hereinafter to be known as the competent authority shall be—

a) Chancellor in the case of Vice-Chancellor ;

b) * * *

c) * * *

d) * * *

e) * * *

(2) The earned leave admissible to an employee of the University shall be 1/11th of the period spent in the service of the University, provided that he will cease to earn such leave when the earned leave amounted to 120 days and provided further that this limit of 120 days will not be applicable in the case of employees on deputation with the University or transfered from the Agriculture and Animal Husbandry Deparments to the University on foreign service, who will continue to be governed by the rules applying to them in their parent Department/Government.

(4) (1901) A.C. 495.

(3) Furlough admissible to an employee of the University shall be one-eleventh of his continuous service provided that—

a) * * * *
b) * * * *
c) * * * *
d) * * * *
e) * * * *
f) * * * *

(4) Furlough may be granted in combination with earned leave.

(5) * * * *
(6) * * * *
(7) * * * *
(6) * * * *

(9) *If the employee overstays his leave he shall forfeit all his salary during the time of his remaining so absent; and if he overstays his leave for more than one week his office shall be liable to be declared vacant.*

(10) *Leave account of each employee of the University shall be maintained.*

(11) *Leave cannot be claimed as of right.*

(12) * * * *
(13) * * * *
(14) * * * *
(15) * * * *

Now even a plain look at the exhaustive 16 sub-clauses of the afore-quoted clause 20 would clearly indicate that this is a self-contained code as regards the grant of leave and matters appurtenant thereto including the overstay thereof and the necessary penal consequence which may follow as a result including the forfeiture of salary and in more extreme cases the loss of the office itself. It deserves reiteration that apart from the general law of 'master and servant' the only fetter on the employee's right and the sole Magna Carta in this respect for the respondent is the afore-quoted statutes

and others relevant to the point framed by the University. What deserves highlighting therein is that under sub-clause (11) it is made manifestly and categorically evident that leave cannot be claimed as of right and is in the discretion of the employer. It follows plainly therefrom that the employer would have the right and the power to impose sanctions where leave is either unauthorised or refused or where there is overstay of the same. Sub-clause (9) in terms provides that sanction and lays down the penalty which inevitably will flow from overstaying the leave unauthorisedly. This issue, therefore, boils down simply to this whether sub-clause (9) necessarily requires an opportunity to show cause or to put it in other words 'attracts the rules of natural justice'. It is obvious and indeed it was conceded that its language does not expressly envisage the issuance of any notice or the providing of a reasonable opportunity to show cause expressly. The sole question, therefore, is whether such a requirement of notice or the principles of natural justice are implicity and necessarily attracted despite the silence of the framers of the statute to do so in as many words.

(19) To answer the question aforesaid, one must necessarily apply the touchstone of Col. J. N. Sinha's case (5) authoritatively laid down by their Lordship of the Supreme Court in the following terms:—

> "Fundamental Rule 56(j) in terms does not require that any opportunity should be given to the concerned government servant to show cause against his compulsory retirement. A Government servant serving under the Union of India holds his office at the pleasure of the President as provided in Article 310 of the Constitution. But this 'pleasure' doctrine is subject to the rules or law made under Article 309 as well as to the conditions prescribed under Article 311. Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in Kraipak and others v. Union of India, (5A) the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other

(5) (1970 S.L.R. 213.)
(5A) A.I.R. 1970 S.C. 150.

words they do not supplant the law but supplement it'. It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. *Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purposes for which it is conferred and the effect of the exercise of that power."*

It is evident from the above that the four pre-conditions for the attraction or the exclusion of the natural justice are:—

(a) the express language of the provision ;

(b) the nature of the power conferred ;

(c) the purpose for which it is conferred ; and

(d) the effect of its exercise.

(20) As regards the first and primary requirement it bears repetition that the language of clause 20(9) does not even remotely allude to any notice or the necessity of holding an enquiry. It does not at all refer either expressly or impliedly to the principles of natural justice. Consequently, there does not arise any necessary implication even remotely for invoking the rule of *audi alterum partem.*

(21) The second test is with regard to the nature of the power conferred. Now here it appears to be plain that the matters of grant, refusal or overstaying of leave and its penalties etc. are in essesnce pristinely administrative. It would be plainly atrocious

to hold that these powers are in any way judicial or quasi-judicial. This is, of course, not to say that the principles of natural justice may not be attracted in the case of the exercise of administrative power at all. Indeed in some cases it may well be so. However, it is plain that whilst in the exercise of judicial and quasi-judicial power the principles of natural justice are normally attracted unless expressly excluded, this, however, cannot necessarily be so in the case of the exercise of the pure administrative powers. It is true that the line between the administrative and the quasi-judicial acts is now dim but that is not any reason to deliberately obliterate and efface the same. It is perhaps in his context that one must recall and highlight the warning words of Lord Shaw in the famous Arlidge' case (6) which the passage of nearly seven decades has not dimmed :—

> " * * * The judgments of the majority of the Court below appear to me, if I may say so with respect, to be dominated by the idea that the analogy of judicial methods or procedure should apply to departmental action. Judicial methods may, in many points of administration, be entirely unsuitable and produced delays, expense, and pubiic and private injury. * * *
>
> * * If it is left without express guidance it must still act honestly and by honest means. In regard to these certain ways and methods of judicial procedure may very likely be imitated, and lawyer-like methods may find especial favour from lawyers. But that the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation. And the assumption that the methods of natural justice are ex-necessitate those of Courts of justice is wholly unfounded".

(22) Coming now to the purpose for which the power is conferred it seems to be writ large on the provisions of clauses 20(9). Plainly this is to provide a strict sanction against the employees unauthorisedly overstaying their leave for inordinately long periods. There is no gainsaying the fact that some sanction against unauthorised and unwarranted absence from the post is the

(6) (1915 A.C. 120).

very basic modicum of even an elementary discipline in a service. As to what such a sanction would be or the nature of its severity must inevitably be left to the wisdom of the framers of the statute who would know best what situation they have to meet. Mr Kuldip Singh was on firm ground in contending that without a sanction of this nature perhaps no large organisation can possibly function. The case in hand was itself cited as a patent example where in the critical situation of finalising the annual examination a large number of striking employees left the University in lurch, thus rendering it unable to discharge its duties to the students and the public. It was rightly contended that unless some power was vested in the University or a penalty provided for unwarranted absence, it would be totally impossible for the University to discharge its functions. There seems thus to be no manner of doubt that the purpose for which the power is conferred is laudable and the sanction provided therefor is an inherently essential requirement.

(23) Lastly, adverting to the effect of the exercise of this power or sanction it is plain that the statute provides for varying degrees of severity to match the period of unwarranted absence from duty. As has already been noticed the first part of it is absolute in terms leaving no option to the authorities with regard to the forfeiture of the salary during the period for which an employee, remains unauthorisedly away from his post. The second limb of the provision, however, is both discretionary & hedged down with pre-conditions for its exercise and effect. It seems to take a relatively paternal view of unauthorised absences up to a period of seven days. Apparently if an employee returns to the post within a week of overstaying his leave he would not in any case be liable to the severer penalty. Mr. Kuldip Singh was right in contending that in such a situation he virtually has seven days to rejoin and inevitably show any reason for his overstaying. It is only when he oversteps this reasonable limit of unauthorisedly overstaying beyond a week that the exercise of the power to declare his office vacant is attracted. It again deserves highlighting that this declaration is not automatic but discretionary in the authority and it is not bound in all cases to declare the office of the employee vacant the moment he oversteps the limit of seven days. Nevertheless the right conferred on the appropriate authority to declare the office vacant is an absolute one. However, that power can be exercised only subject to the conditions

mentioned in the statute, namely, absence for a period of more than seven days. If the authority *bona fide* comes to the opinion that in such a situation it is necessary to declare the office vacant then it can exercise the power without any other condition being attached thereto.

(24) Having analysed the provision on the basis of the four tests one may for a moment go back to the ratio in *J. N. Sinha's case* Therein fundamental rule 56(j) conferring an absolute right on the Government to retire a Government servant by giving him three months' notice if two conditions prescribed therein were satisfied had fallen for construction. The High Court took the view that the principles of natural justice were necessarily attracted before the exercise of the power under fundamental rule 56(j) and invalidated the order on that ground alone. Unreservedly reversing the decision of the High Court, their Lordships of the Supreme Court took the view that there was no question of applying the principles of natural justice under the said rule. It has to be borne in mind that the compulsory retirement under that rule might well deprive the holder of the post of eight years or more of his service at the prime of his career and their Lordships observed that it was true that compulsory retirement is bound to have adverse effect on the government servant so compulsorily retired. Nevertheless, they took the view that the principles of natural justice were not attracted. Applying that ratio in the present context it would appear that the language of clause 20(9) in conferring a purely administrative power makes not the least mention of a notice or an opportunity to show cause and it is evident that its very purpose of providing a sanction against unwarranted absences from duty would be totally frustrated if the requirement of holding an enquiry and an opportunity to show cause is super-imposed by judicial interpretation. The end-result would be that no action to compel the return of a recalcitrant employee deliberately absent from duty as in the present case would be possible till he chooses to return to duty. It will bring into the arena of the grant of leave and over-staying thereof all the paraphernalia of holding an enquiry and opportunity to show cause which by judicial interpretation involves the right to lead evidence, to examine witnesses, & to have access to all materials. In effect the question of overstaying leave and the penalty provided therefor would be converted into a regular *lis*

between the employer and the employee. I take the view that no public service can possibly function when hedged with such hurdles at the step of the grant of leave and its unauthorised overstaying.

(25) Before adverting to precedent, it is necessary in fairness to Mr. Kuldip Singh, learned counsel for the appellant to notice his analysis of the object, scope and the procedural requirements of clause 20(9). The plain purpose of the provision is to prevent unauthorised absence from duty and overstaying of leave. Counsel rightly pointed out that this is a necessary concomitant of any disciplined service. Therefore, the provision of penalty for over-staying and of a severe one for gross overstaying, is not only perfectly legal but indeed eminently desirable. It is plausibly contended that once that is so, then the nature or the severity of such a sanction or penalty is wholly for the employer to prescribe and it is not for the Courts to sit on judgment. With regard to the particular disciplinary requirements of University establishments. It has been rightly pointed out that the penalty of having the office declared vacant is neither automatic nor mandatory and at best an erring absentee from duty is only subject to the liability of its imposition. Again the exercise of the power is not arbitrary and can be exercised only on the fulfilment of the objective foundation of an employee having overstayed for more than seven days. It has to be kept in mind that the reasons, if any at all for unauthorised absence are entirely in the knowledge of the employee himself and it is for him to show as to why he has unauthorisedly remained away from duty without permission. The employer-University in a given case may be wholly unaware or as in the present case may be clear that the reasons for overstaying are utterly unjustifiable. At the stage of the absence or refusal of an employee to rejoin his post to require notice and enquiry against him, according to Mr. Kuldip Singh was trying to put the cart before the horse. It was his fair stand that if good cause was shown for overstaying, there was no earthly reason why a responsible employer would not recall the order of the declaration of the office being vacant. Therefore, at the very highest, in such a situation a post-decisional opportunity to explain the over-stay and recall of the order is the very maximum that can be called for. But, to ask for the requirement of notice and enquiry before even initiating any action, would be wholly and utterly

frustrative of both the object and the purpose of clause 20(9) which otherwise is admittedly within the four corners of the law.

(26) What appears to be evident on principle, as noticed above is equally well supported by precedent. In *Prem Nath Bhalla v. State of Haryana and others,* (7), the question before the Full Bench specifically was whether the Executive Officer of a municipal committee could be removed without complying with the rules of natural justice by affording an opportunity to show cause against such an action. Pandit, J., speaking for the Bench categorically repelled the claim in the following terms :—

> " * * * But, on the other hand, if in the very beginning he is told that though he is being appointed for five years, yet his services can be terminated at any time during that period by the Government, he cannot complain as to why his services are being dispensed with earlier. Further he cannot be heard to say for what reason such an action is being taken against him. Principles of natural justice do not come in a situation of this kind. The Government can legitimately tell him that in the very beginning he was told that he could be asked to go at any time without assigning any reason. What possible grievance can such an employee have ? The principle of natural justice cannot be invoked by him. It cannot be seriously argued that the principles of natural justice will be attracted in each and every case and this principle is of universal application. It cannot be said that whenever the services of an employee of any kind are dispensed with, he can take refuge under that principle and demand a show-cause notice. As I have already observed that if an employee is told in the very beginning before he accepts the appointment that his services are at the pleasure of the Government and the same can be terminated at any time, he cannot have any grievance if the Government exercises that power without issuing a show-cause notice to him."

(7) 1971 P.L.R. 42.

(27) As has been said earlier the very charter of the University employees are the statutes. They inform in unequivocal terms, every employee that he accepts appointment on the condition spelled out under clause 20(9). It plants him with clearest knowledge that overstaying of leave beyond a period of one week would be at the peril of his office being declared vacant. Therefore, if the same is applied little grievance, if any, can be made on their behalf that the said power is being exercised without the cumbersome parapheralia of holding an enquiry and then deciding a matter so common place as the grant or refusal of leave. The observations of the Full Bench quoted aforesaid, therefore, appear to be equally attracted in the present context.

(28) In *Hazara Singh* v. *Union of India and others* (8), the claim of natural justice was again pointedly raised in the context of the exercise of the power of dismissal of an official under sections 18 and 19 of the Air Force Act, 1950. The parity of a situation may be noticed as it is obvious that Article 311 of the Constitution would be applicable neither to an Air Force employee nor is it so in the case of the University employees. The terms of the two provisions of the Air Force Act deserve notice in *extenso*:—

> 18. Tenure of Service under the Act. Every person subject to this Act shall hold office during the pleasure of the President.
>
> 19. *Termination of service by Central Government.*—Subject to the provisions of this Act and the rules and regulations made thereunder, the Central Government may dismiss, or remove from the service any person subject to this Act".

Nevertheless even in the context of a dismissal thereunder H. L. Anand, J. summarily rejected the importation of the rules of natural justice in the following terms :

> "It was next contended that in any event the Presidential pleasure must be held to be subject to the principles of

(8) 1976 (1) S.L.R. 340.

natural justice and the order must, therefore, be struck down inasmuch as the petitioner could not be said to have been given reasonable opportunity of being heard before the impugned order was made nor does the order indicate the reasons on which it was based so as to admit of effective judicial scrutiny. There was some controversy before me if the course of investigation and the communication exchanged between the petitioner and the authorities could not be said to constitute a reasonable opportunity of being heard but it is unnecessary to take this matter any further because the Presidential power in relation to the Defence Service being wholly untramelled could not possibly be subjected to any constraint other than those founded in the constitution itself It is, therefore, not possible to subject an order, made in exercise of Presidential pleasure in the matter of such services, which are beyond the purview of Article 311 of the Constitution of India, to judicial scrutiny at the touchstone of the principles of natural justice. It is also not open to the Court to interfere if an order in exercise of such pleasure did not disclose any reason which could justify it or at all, as in the present case. This contention must, therefore, fail."

It then deserves recalling that in the well-known Full Bench case of *Sankalchand Himatlal Sheth* v. *Union of India and another* (9) Mehta, J. elaborately took the view that the power of the President under the Constitution to transfer a Judge of the High Court again must be exercised in conformity with the principles of natural justice. However, on appeal in *Union of India* v. *Sankalchand Himatlal Sheth and another* (10), Chandrachud, J. (now Hon'ble the Chief Justice) speaking for the majority negatived this stand with the following observations:—

"One of the learned Judges of the Gujarat High Court, J. B. Mehta, J., has invalidated the order of transfer on the additional ground that it was made in violation of the

(9) (1976) 17 Gujarat Law Reporter 1017.

(10) AIR 1977 S.C. 2378.

principles of natural justice, a consideration which in my opinion is out of place in the scheme of Article 222(1)".

Untwalia, J., however, forcefully went much further to observe as follows: —

"To invoke the principle of natural justice in the case of transfer of a judge under Article 222 (1), if otherwise it is permissible to make the transfer without his consent, *will be stretching the principle to a breaking point. It **will lead to many unpractical,** anomalous and absurd results and will have inevitable repercussions in the order of transfers made in other branches of service either under the Union or the States.*"

I believe that the aforesaid words of warning are pregnant with meaning. With prophetic foresight Untwalia, J., could visualise the mischief of an indiscriminate extension of the rules of natural justice in other branches of service law. If their application in the context of transfer may lead to an unpractical, anomalous and absurd results as held above by Untwalia, J., would the situation be any different, if they are extended to the field of the grant, refusal and the penalties for overstay of leave? The dangers which the learned Judge had visualised are in a way manifest in the particular case in hand. The respondent-writ-petitioner, though present on the premises of the Universvity, contumaciously refused to return to duty when repeatedly asked to do so. He sought to make a mockery of the attempt to serve him expeditiously even by telegrams. Even in the face of the sanction in the clause 20(9), he deliberately and definitely refused to return to work far beyond the prescribed period of one week. Mr. Kuldip Singh rightly contended that if the principles of natural justice are thrust into such a provision, the very purpose and object of the sanction laid therein for providing some deterrent against unauthorised overstay of leave would be totally lost.

(29) It was rightly argued that where is the harassed employer to search and serve notice on such an errantly elusive or absconding employee, when his services may sorely be needed in a critical

situation?. What would be the essential pre-requisite for satisfying the rules of natural justice in such a situation? If made applicable at this stage, the whole matter may become a regular *lis* requiring not only the service of a notice, but inevitably thereafter an enquiry into the reasons of overstaying, giving a reasonable opportunity to the official to lead evidence, to establish the same and further affording him an access to all the adverse material against him and an opportunity to cross-examine and challenge any witnesses against him on the point. The inevitable result would be that clause 20(9) far from being a good sanction for recalling an errant employee back to duty would indeed become a dead letter or a hornet's nest for the employer if any meaningful action is to be envisaged thereunder. In construing a provision of this nature, to my mind to doctrinaire or a pedantic approach must be avoided. Virtue herein may perhaps still lie in the Aristotlian mean. It must be broadly kept in mind that the paramount purpose of the public service is advancing the public interest and not the personal and private interest of individual members thereof. Public service need not be invariably viewed as a continuous war of attrition betwixt the employer and the employee — a vertiable *lis* at all stages from the date of appointment to even such matters like the grant, refusal, extension or overstaying of leave and transfers etc. If some penalty for gross unauthorised overstay of leave beyond a period of seven days at a critical time of the employment, cannot be imposed without holding an enquiry and importing all that the principles of natural justice apply, then why should a similar right not accrue even at the initial stages of the grant of leave or the refusal thereof? Why then should the grant of leave be in the discretion of the employer and its sanction be vested in him, and rules of natural justice be not attracted at that stage as well?. The matter can perhaps he extended *ad infinirtum* as Untwalia, J. rightly fore shadowed in his hoarkening words. I believe that we should at least attempt to avoid an approach of blissfully sitting in ivory towers on Olympian heights totally unmindful of the difficult and indeed now the progressively dangerous role of those on whom lies the heavy burden of keeping the rocking boat of the country's Universities on an even keel.

(30) A passing reference has been made by my learned brother S. C. Mital, J. to *Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others*, (supra) *and Smt.*

Maneka Gandhi v. *Union of India and another* (supra). As was authoritatively said in *Col. J. N. Sinha's case* (supra), the invoking of the principle of natural justice depends primarily on the express words in which the power is conferred, the nature of the power and the purpose for which it is conferred and the effect or exercise thereof. The question has, therefore, always to be viewed in the light of the specific statutory provision. Therefore, I am unable to see how the situation in the context of the impounding of a passport in *Smt. Maneka Gandhi's case* (supra) or the holding of an election in a parliamentary constituency in *Mohinder Singh Gill's case, has any relevance or anology to the issue of the invoking of* the principles of natural justice within the narrow confines of the service law governed by the specific provisions of the University statutes.

(31) I would wish to close this dissent with the words of Lord Denning, a Judge known for his liberalism and even for his extension of the rules of natural justice in *R. V. Secretary of State,* (11), which was expressly approved by their Lordships of the Supreme Court in *Sarin H. C.* v. *Union of India* (12) as under :—

> "...... If Mr. Mughal had been lawfully settled here, the enquiries which the immigration officer made would go to help him—to corroborate his story—rather than hinder him. There was no need at all for immigration officer to put them to him when they proved adverse. *The rules of natural justice must not be stretched too far. Only too often the people who have done wrong seek to invoke the rules of natural justice so as to avoid the consequences.*"

(32) To conclude the answer to the question posed at the very out set is therefore, rendered in the negative and it is held that the principles of natural justice are not attracted in the inevitable penalty prescribed for unauthorisedly overstaying the leave beyond a period of seven days in the context of clause 20(9) of the University Statutes. It bears repetition even at the end that admittedly as regards the university employees the protection of Article

(11)) (1973) 3 All England Law Reporter 796.

(12) 1976 (2) S.L.R. 248.

311 of the Constitution of India is not remotely attracted. The impugned order, Annexure 'P' is, therefore, held to be valid. The appeal should be allowed with no order as to costs.

Harbans Lal, J.

(33) I have closely perused the two judgments rendered by S.C. Mital, J., and the learned Chief Justice. I agree with Mital, J., I have given my thoughtful consideration to the judgment of the learned Chief Justice, but I have not been able to persuade myself to the opinion expressed therein. In view of the importance of the question involevd, I would like to express my opinion separately.

(34) The respondent was a permanent employee of the Punjab Agricultural University and was sanctioned leave up to July 15, 1973. Thereafter, his application for extension of leave for 15 days was rejected. As he overstayed his leave for more than a week, his offce was declared vacant under rule 20(9) of the Rules framed under the Punjab Agricultural University Act, 1961, by order of the Vice-Chancellor, without affording him any opportunity of hearing. His challenge to the order resulting in his removal, through a writ petition, succeeded before the learned Single Judge. The decision of the learned Single Judge having been challenged in the letters patent appeal, the legality of the order *vis-a-vis* the scope and ambit of rule 20(9) and the applicability of the principles of natural justice regarding opportunity of hearing, falls for determination before the Full Bench.

(35) I am of the considered opinion that rule 20(9), is not a self-contained provision and has to be considered along with rule 19(1) and rule 12. A combined perusal of these provisions makes it evident that in sub-clause (a) to (f) of rule 19(1) various grounds are mentioned on the basis of which the services of an employee of the University can be terminated. These grounds include gross negligence in the discharge of duty and misconduct. If an employee is found guilty on any of the grounds, his services are liable to be terminated. Rule 12 is a comprehensive provision relating to the imposition of various penalties on an employee of the University. These penalties can result in dismissal or removal from service or reduction in rank besides other minor penalties of withholding of

increments etc. In clause (i) of rule 12, it has been specifically provided that any of these penalties can be awarded only, "for good and sufficient reason". In clause (iii), it has been laid down that if the penalty to be awarded is dismissal, removal or reduction in rank then before arriving at a final decision relating thereto "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" has to be provided. With regard to the other minor penalties regarding suspension, censure or withholding of increments or promotion, there is no such requirement. Under rule 20(9), the office of an employee is liable to be declared vacant if he overstays his leave for more than a week. It does not need much serious consideration that the declaration of an office was vacant, termination of services or removal from service is distinct from dismissal which, according to sub-clause (g) of rule 12(i) ordinarily disqualifies an employee from future employment, and are only different expressions of language, but the end result is the same that the services of an employee come to an end. The contention raised on behalf of the University that the dedclaration of the office of an employee as vacant under rule 20(9), is not analogous to removal as visualised in rule 12(i)(f), has only to be stated to be rejected.

(36) In *Jai Shanker* v. *State of Rajasthan,* (supra), the services of an employee had come to an end on the basis of the following provision:

> "An individual who absents himself without permission or who remains absent without permission for one month or longer after the end of his leave should be considered to have sacrificed his appointment and may only be re-instated with the sanction of the competent authority".

The contention on behalf of the Government before their Lordships of the Supreme Court that the employee as a result of his over-staying his leave was deemed to have sacrified his post and that it was not a case of his removal by the Government was not held as tenable. It was held,—

> "A person is entitled to continue in service if he wants until his service is terminated in accordance with law. One

circumstance deserving removal may be over-staying one's leave. This is a fault which may entitle Government in a suitable case to consider a man as unfit to continue in service. But even if a regulation is made, it is necessary that Government should give the person an opportunity of showing cause why he should not be removed."

(37) By merely adopting an apparent innocent expression that the office of an employee will be declared vacant on his overstaying the leave, the reality and the substance cannot be lost sight of that, in fact, on account of misconduct of overstaying leave, an employee is removed from service or his services are terminated. The provision as embodied in rule 20(9) does not admit of any other interpretation except the one that in case of overstay of leave on the part of an employee,he is liable to be removed from service by the employer. It is also crystal clear that overstay of leave is an act of misconduct or gross negligence in the discharge of duty on the part of an employee as he has no absolute right to proceed on leave without the sanction of the authority concerned. This being the position, an employee cannot be removed from service on account of overstaying his leave except in accordance with the provisions of rule 12(iii), which is reproduced below:

"No penalty of dismissal, removal or reduction shall be imposed unless the employee has been given a reasonable opportunity of showing causes against the action proposed to be taken in regard to him."

(38) The learned counsel on behalf of the University urged, that this provision was not attracted because firstly, the declarations of an office as vacant under rule 20(9) was not removal or dismissal or reduction in rank, and secondly, that the requirement of opportunity of hearing does not find mention in rule 20(9). As discussed above, the action under rule 20(9) is removal pure and simple. So far as the second contention is concerned, the termination of services of an employee whether by way of dismissal or by way of removal can be only on any of the grounds mentioned in rule 19(1) and the essential and mandatory procedure for awarding the penalty of removal, dismissal or reduction in rank is provided in rule 12(iii). The removal mentioned therein obviously refers to and includes removal

on any of the grounds which will also include the ground concerning overstay of leave as mentioned in rule 20(9). When the mandatory requirement of reasonable opportunity to show cause is provided in rule 12 for all cases of removal, it was not necessary nor even appropriate or desirable to reiterate the same in rule 20(9). The ground of removal, mentioned in rule 20(9) on the basis of overstaying the leave is only one of the illustrations and cannot be treated as distinct from other grounds of removal. If an employee overstays his leave even when further leave is not granted, it cannot but be termed as misconduct or negligence of duty as envisaged in rule 19(1).

(39) Besides, under rule 20(9), in case of overstay of leave on the part of an employee, the said conduct or the misconduct, as the case may be, is not bound to result in removal or automatic declaration of the office as vacant. Only a discretion has been conferred on the employer to remove the employee concerned and declare his office vacant. It has been clearly provided therein that the office is liable to be declared vacant. In this situation, there must be some material before the employer before his discretion can be exercised. It cannot be contended that removal could be ordered even arbitrarily. In fact, the learned counsel on behalf of the University was emphatic in urging that the employer was bound to exercise his discretion in a proper, balanced and reasonable manner. It is uncomprehensible as to how the discretion can be properly exercised unless the employee has been given an opportunity to show cause and he explains the circumstances in which he overstayed his leave. Without an opportunity having been granted, there will be no material before the employer and the decision is bound to be an act of arbitrariness and not in exercise of his discretion. Rule 12(1) again specifically provides that the penalties mentioned therein including that of removal will be imposed "for good and sufficient reason". How can an order of removal disclose good and sufficient reason unless the employee concerned had been heard and given an opportunity to explain the circumstances relating to overstay of his leave?

(40) Thus viewed from any angle, there is no escape from the conclusion that the order of the employer under rule 20(9) has to be a speaking order disclosing "good and sufficient reason", and as a result of exercise of discretion. Secondly, it has also to comply with

the mandate as embodied in clause (iii) of rule 12, regarding opportunity of hearing.

(41) Lastly, the said requirement is also implicit in rule 20(9), as it is specifically laid down that the mere factum of overstay of leave for more than a week will not result in automatic removal from service or the declaration of office as vacant, but it was only liable to be so. In any decision to be made in the exercise of the discretion, opportunity of hearing is the very basis without which discretion cannot be exercised.

(42) The second equally important facet of the issue is on the assumption that rule 20(9) is a self-contained provision and cannot be read along with other provisions referred to above and in this provision, the requirement relating to opportunity of hearing is not embodied. The argument of Mr. Kuldip Singh, the learned counsel for the appellant, in this regard is that wherever and in whatever cases the University wanted that opportunity of hearing should be provided to the delinquent or the defaulting party, it was so provided as in rule 12, but the same was not provided in rule 20(9). The learned counsel even went to the extent of stressing that the mention in this provision regarding the opportunity of hearing is a clear indication that this principle of natural justice was intended to be excluded in the matter of termination of services of an employee on the ground of overstay of leave beyond one week. According to the learned counsel, it was done with a purpose and to achieve an object which was that the administration of the University may be in a position to run effectively and efficiently without adoption of any obstructionist policy by an employee or a number of employees by even overstaying leave. If the dilatory method which was inherent in the adoption of the principle of opportunity of hearing was allowed, the delinquent employee may remain absent indefinitely for a number of months even beyond one year with impunity and if these tactics were adopted by a number of employees, the whole administration will come to a stand still.

(43) These contentions cannot bear a deeper and closer scrutiny. The important principle of natural justice as embodied in *audi alteram partem* relating to the notice and opportunity of hearing to a party against whom some adverse order is to be passed, has been

under discussion in a chain of decisions of their Lordships of the Supreme Court and it has been held that the same applies not only to the cases where the authority is required to act in a quassi-judicial manner, but also in purely administrative matters. This important principle of natural justice has been held to mean to act justly and fairly and not arbitrarily. The doctrine has been held succinctly to be 'fair-play in action'. Where an order results in civil consequences against whom the same is passed, strict observance of the principle and to provide a notice of hearing have been held to be mandatory.

(44) *In A. K. Karipak* v. *Union of India* (13), it was held by their Lordships,—

> "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made."

(45) In *Smt. Maneka Gandhi* v. *Union of India and another* (supra), in the well-known Passport Case, it was held by Seven Judges Bench of their Lordships,—

> "Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of *audi alteram partem,* which mandates that no one shall be condemned unheard, is part of the rules of natural justice."

An analogous contention that the prior notice may frustrate the object was also repelled and it was held,—

> "It would not be right to conclude that the *audi alteram partem* rule is excluded merely because the power to impound a passport might be frustrated, if prior notice and hearing were to be given to the person concerned before impounding his passport."

(13) A.I.R. 1970 S.C. 150.

(46) In *Mohinder Singh Gill and another* v. *The Chief Election Commissioner, New Delhi and another* (supra), where one of the questions involved was whether the Election Commission while ordering re-poll of the entire constituency was required to afford an opportunity of hearing to the candidates when the relevant provision under Article 324 of the Constitution was silent, it was held that it was imperative for the Election Commission to give a hearing before ordering re-poll. The paramount necessity of the applicability of the principles of natural justice was stressed, as follows:

> "Normally, natural justice involves the irritating inconvenience for men in authority, of having to hear both sides since notice and opportunity are its very marrow. And this principle is so integral to good government, the onus is on him who urges exclusion to make out why. Lord Denning expressed the paramount policy consideration behind this rule of public law (while dealing with the *nemo judex* aspect) with expressiveness:
>
> "justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking the judge was biased '.'
>
> We may adapt it to the *audi alteram* situation by the altered statement:
>
> 'Justice must be felt to be just by the community if democratic legality is to animate the rule of law. And if the invisible audience sees a man's case disposed of unheard, a chorus of 'no-confidence' will be heard to say, 'that man had no chance to defend his stance'.'

(47) On behalf of the University, reliance was placed on *Union of India* v. *Sankalchand Himatlal Sheth and another* (supra), and it was contended that therein, the principles of natural justice regarding notice and hearing were held not to be applicable in the case of transfer of Judges of the High Court from one High Court to the other without their consent and the opinion of Mehta J., one of the Judges of the Full Bench of the Gujarat High Court from which the appeal had been filed, that the order of transfer of the Judge was invalid on the additional ground that it was made in violation of the principles of natural justice, was negatived. However, the relevant discussion in paragraphs 42 and 43 of the judgment shows that it was held that the

principles of natural justice were not attracted as the same were out of place in the scheme of Article 222(1) of the Constitution. It was also held,—

> "Article 222(1) postulates fair play and contains built-in safeguards in the interests of reasonableness. In the first place, the power to transfer a High Court Judge can be exercised in public interest only. Secondly, the President is under an obligation to consult the Chief Justice of India which means and requires that all the relevant facts must be placed before the Chief Justice. Thirdly, the Chief Justice owes a corresponding duty, both to the President and to the Judge who is proposed to be transferred, that he shall consider every relevant fact before he tenders his opinion to the President. In the discharge of this constitutional obligation, the Chief Justice would be within his rights, and indeed it is his duty whenever necessary, to elicit and ascertain further facts either directly from the Judge concerned or from other reliable sources. The executive cannot and ought not to establish rapport with the Judges which is the function and privilege of the Chief Justice. In substance and effect, therefore, the Judge concerned cannot have reason to complain of arbitrariness or unfair play, if the due procedure is followed. I must add that Mr Seervai did not argue that the order of transfer is bad for non-compliance with the principles of natural justice."

(48) As far as the present case is concerned, there are no in-built safeguards in the provision of rule 20(9) that the order of removal from service will be passed after any consultation. The plea that the strict observance of the principles of natural justice will frustrate the object of the rule itself appears to be based on imaginary and exaggerated apprehension. Firstly, this plea can be taken to negative and to nullify the right of hearing in any case of misconduct even resulting in dismissal of an employee and thus, in course of time, the principles can be eroded completely. Secondly, I have not been able to appreciate as to how providing an opportunity of hearing to an employee will paralyse the administration. Notice to

show cause can be served without any loss of much time. If an employee adopts dilatory tactics so as to obstruct the service of notice, a case can be made out that fair opportunity was given to serve the notice and thereafter, a proper action can be taken, but on the assumption that one employee or a number of employees may overstay the leave for more than a week under particular set of circumstances separately or collectively, this basic and salutary principle of natural justice, the importance and value of which has now been so well recognised and emphasized by their Lordships of the Supreme Court cannot be set at naught by any subtle contrivance. In an extreme case even resort can be had to suspension of the employee during enquiry. In any case, the danger of arbitrariness in passing orders of removal of employees without hearing outweighs all such pleas of inconvenience or the dangers in case of non-co-operative attitude of the defaulting employees.

(49) In the present case, if the Vice-Chancellor had arrived at the conclusion that this drastic action was necessitated by the fact that the employee had made himself non-available for any show cause notice being issued, the respondent would have been allowed an opportunity immediately after the order of removal had been passed and he went to the office of the University to assume charge which was refused. This shows that the University never contemplated of any hearing being given to the respondent whether before or after the impugned order of removal.

(50) For the reasons mentioned above, I agree with my esteemed brother Mital, J., that the appeal be dismissed.

ORDER OF THE COURT

(51) In accordance with the majority view, the appeal is hereby dismissed. The parties will bear their own costs.

S. S. Sandhawalia, Chief Justice.

S. C. Mital, Judge.

Harbans Lal, Judge.

N.K.S.

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